

Senate File 457 - Introduced

SENATE FILE 457
BY COMMITTEE ON LOCAL
GOVERNMENT

(SUCCESSOR TO SF 231)

A BILL FOR

1 An Act relating to city civil service and including effective
2 date provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 400.1, subsection 1, Code 2023, is
2 amended to read as follows:

3 1. In cities having a population of eight thousand or over
4 and having a paid fire department or a paid police department,
5 the mayor, one year after a regular city election, with the
6 approval of the council, shall appoint three civil service
7 commissioners. The mayor shall publish notice of the names
8 of persons selected for appointment no less than thirty days
9 prior to a vote by the city council. Commissioners shall hold
10 office, one until the first Monday in April of the second year,
11 one until the first Monday in April of the third year, and one
12 until the first Monday in April of the fourth year after such
13 appointment, whose successors shall be appointed for a term
14 of four years. In cities having a population of more than
15 seventy fifty thousand, the city council ~~may~~ shall establish,
16 by ordinance, the number of civil service commissioners at
17 not less than ~~three~~ five but not more than seven. However,
18 in cities having a population of more than fifty thousand and
19 having a paid fire department or a paid police department, the
20 mayor, with the approval of the council, shall appoint five
21 civil service commissioners.

22 Sec. 2. Section 400.18, subsections 1 and 3, Code 2023, are
23 amended to read as follows:

24 1. A person holding civil service rights as provided in
25 this chapter shall not be unreasonably or unjustly removed,
26 discharged, demoted, or suspended ~~arbitrarily~~, but may be
27 removed, discharged, demoted, or suspended ~~due to any act or~~
28 ~~failure to act by~~ upon a finding by a preponderance of the
29 evidence that the employee committed an act or failure to act
30 that is in contravention violation of clearly established
31 law, city or reasonable city policies, or standard operating
32 procedures, or that in the judgment of the person having the
33 appointing power as provided in this chapter, or the chief of
34 police or chief of the fire department, is sufficient to show
35 that the employee is unsuitable or unfit for employment rules.

1 3. The city shall have the burden to prove that the act or
 2 failure to act by the employee was in ~~contravention~~ violation
 3 of clearly established law, or reasonable city policies, or
 4 ~~standard operating procedures~~, or is sufficient to show that
 5 ~~the employee is unsuitable or unfit for employment~~ department
 6 rules. For purposes of this chapter, the city shall establish
 7 each element of the charges specified under section 400.22
 8 by a preponderance of the evidence. The city shall have the
 9 burden to prove that the punishment imposed upon the employee
 10 is proportionate, reasonable, and just in the totality of the
 11 circumstances.

12 Sec. 3. Section 400.19, Code 2023, is amended to read as
 13 follows:

14 **400.19 Removal, discharge, demotion, or suspension of**
 15 **subordinates.**

16 The person having the appointing power as provided in
 17 this chapter, or the chief of police or chief of the fire
 18 department, may, upon presentation of reasonable and just
 19 grounds for such action to the subordinate in writing,
 20 peremptorily remove, discharge, demote, or suspend a
 21 subordinate then under the person's or chief's direction due
 22 to any proven act or failure to act by the employee that is
 23 in ~~contravention~~ violation of clearly established law, or
 24 city policies, or ~~standard operating procedures~~, or that in
 25 ~~the judgment of the person or chief is sufficient~~ immediately
 26 detrimental to show that the employee is unsuitable or unfit
 27 for employment public.

28 Sec. 4. NEW SECTION. **400.22A Exculpatory evidence.**

29 A person shall not knowingly withhold exculpatory evidence
 30 from an employee subject to a written specification of charges
 31 filed under section 400.22.

32 Sec. 5. Section 400.24, Code 2023, is amended to read as
 33 follows:

34 **400.24 Oaths — books and papers.**

35 The presiding officer of the commission or the council, as

1 the case may be, shall have power to administer oaths in the
2 same manner and with like effect and under the same penalties
3 as in the case of magistrates exercising criminal or civil
4 jurisdiction. The council or commission shall cause subpoenas
5 to be issued for such witnesses and the production of such
6 books and papers as either party may designate. The subpoenas
7 shall be signed by the chairperson of the commission or mayor,
8 as the case may be, or by an attorney representing a party
9 before the commission.

10 Sec. 6. Section 400.26, Code 2023, is amended to read as
11 follows:

12 **400.26 Public trial.**

13 The trial of all appeals shall be public, and the parties
14 may be represented by counsel or by the parties' authorized
15 collective bargaining representative. However, upon the
16 request of the employee, the deliberations of the commission
17 shall be held in closed session.

18 Sec. 7. Section 400.27, subsections 1, 2, and 3, Code 2023,
19 are amended to read as follows:

20 1. a. The civil service commission has jurisdiction to hear
21 and determine matters involving the rights of civil service
22 employees under **this chapter**, and may affirm, modify, or
23 reverse any case on its merits.

24 b. If the commission determines that the city proved the
25 employee committed the charge as specified, the commission
26 shall determine whether the removal, discharge, demotion,
27 or suspension of the employee was unreasonable or unjust
28 based upon the totality of the circumstances. For the
29 purposes of this subsection, the commission shall consider
30 factors including the nature of the conduct at issue in the
31 circumstances, the proportionality of the punishment to the
32 conduct at issue, the employee's work history, whether the
33 employee reasonably could comply with the policy or rule in
34 the circumstances and whether the employee's conduct was
35 objectively reasonable in the circumstances, the employee's

1 defenses or justifications, any mitigating or aggravating
2 factors, whether the punishment is reasonably calculated to
3 correct the employee's behavior or conduct or if the punishment
4 is necessary to protect the public interest, and whether the
5 city, its employees, or the appointing authority acted in
6 accordance with the law, city policies, department rules, or
7 standard operating procedures. The commission shall only
8 consider, order, or impose discipline upon the employee for
9 charges proven by the city.

10 c. The commission shall reverse the city's decision and
11 dismiss a charge with prejudice if the city fails to meet its
12 burden of proof as to any element of the charge.

13 d. The final decision of the commission shall be based upon
14 a majority vote of the commission, shall be made in writing,
15 and shall include findings of fact and conclusions relied upon,
16 and reasoning or rationale for the decision, separately stated.
17 The commission shall render and serve its final decision upon
18 the parties within thirty days of the close of the record or
19 trial unless the parties consent to a later date in writing or
20 on the record.

21 2. a. The Except as otherwise provided in this section,
22 the city attorney or solicitor shall be the attorney for the
23 commission or when requested by the commission shall present
24 matters concerning civil service employees to the commission,
25 except the commission may hire a counselor or an attorney
26 on a per diem basis to represent it when in the opinion of
27 the commission there is a conflict of interest between the
28 commission and the city council. The counselor or attorney
29 hired by the commission shall not be the city attorney or
30 solicitor. The city shall pay the costs incurred by the
31 commission in employing an attorney under this section.

32 b. Upon the filing of a notice of appeal pursuant to section
33 400.21, a city attorney, assistant city attorney, or solicitor
34 who represents or has represented the commission shall not
35 represent the city or its officers or employees in an appeal

1 pending before the commission unless the employee waives the
2 conflict of interest in writing or on the record. If the
3 commission is required to hire a counselor or attorney that
4 is not a city attorney, assistant city attorney, or solicitor
5 as provided in this subsection, the city shall pay the costs
6 incurred by the commission in employing a counselor or attorney
7 under this section, and the commission shall independently seek
8 and retain such an attorney.

9 c. A counselor or attorney who represents the commission
10 in an appeal before the commission shall be fair and impartial
11 toward the parties. The counselor or attorney representing the
12 commission may provide advice and counsel to the commission
13 on matters before it and assist the commission with its
14 proceedings and trial as may be necessary or requested.

15 3. The city or any civil service employee shall have a
16 right to appeal to the district court from the final ruling or
17 decision of the civil service commission. The appeal shall be
18 taken within thirty days from the ~~filing~~ service of the formal
19 decision of the commission. The district court of the county
20 in which the city is located shall have full jurisdiction
21 of the appeal. The scope of review for the appeal shall be
22 ~~limited to a trial de novo appellate review without a trial or~~
23 ~~additional evidence.~~

24 Sec. 8. Section 400.27, Code 2023, is amended by adding the
25 following new subsections:

26 NEW SUBSECTION. 2A. The commission shall provide for the
27 production of evidence and exchange of exhibits in advance of
28 trial. The city shall mark its exhibits with numbers. The
29 employee shall mark its exhibits with letters.

30 NEW SUBSECTION. 6. In addition to any other remedies
31 and relief, upon application, the district court may award a
32 prevailing employee reasonable attorney fees, expert fees, and
33 costs and expenses.

34 Sec. 9. EFFECTIVE DATE. This Act, being deemed of immediate
35 importance, takes effect upon enactment.

1 EXPLANATION

2 The inclusion of this explanation does not constitute agreement with
3 the explanation's substance by the members of the general assembly.

4 This bill relates to procedures governing city civil service
5 under Code chapter 400.

6 The bill strikes language authorizing the city council
7 to establish, by ordinance, the number of civil service
8 commissioners at not less than three in a city having a
9 population of more than 70,000. The bill requires the city
10 council to establish, by ordinance, the number of civil service
11 commissioners at not less than five and not more than seven
12 in a city having a population of more than 50,000. The bill
13 requires the mayor, with the approval of city council, to
14 appoint five civil service commissioners in a city having
15 a population of more than 50,000 and having a paid fire
16 department or a paid police department.

17 The bill strikes language providing that an employee holding
18 civil service rights shall not be subject to disciplinary
19 action arbitrarily, but may be subject to disciplinary action
20 due to any act or failure to act by the employee that is in
21 contravention of law, city policies, or standard operating
22 procedures, or that in the judgment of the person imposing
23 disciplinary action, is sufficient to show that the employee
24 is unsuitable or unfit for employment. The bill instead
25 provides that an employee holding civil service rights shall
26 not be unreasonably or unjustly subject to disciplinary action,
27 but may be subject to disciplinary action upon a finding by
28 a preponderance of the evidence that the employee committed
29 an act or failure to act that is in violation of clearly
30 established law or reasonable city policies or department
31 rules.

32 The bill strikes language allowing an appointing authority
33 to peremptorily impose disciplinary action on a subordinate,
34 upon presentation of grounds for such action to the
35 subordinate, due to any act or failure to act by the employee

1 that is in contravention of law, city policies, or standard
2 operating procedures, or that in the judgment of the authority
3 is sufficient to show that the employee is unsuitable or
4 unfit for employment. The bill instead allows an appointing
5 authority to peremptorily impose disciplinary action on a
6 subordinate, upon presentation of reasonable and just grounds
7 for such action to the subordinate, due to any proven act or
8 failure to act by the employee that is in violation of clearly
9 established law or city policies or is immediately detrimental
10 to the public.

11 The bill includes various changes relating to appeals of
12 decisions regarding disciplinary action to city civil service
13 commissions. When an employee is charged with a violation, the
14 bill provides that the city shall establish each element of the
15 charges by a preponderance of the evidence and shall have the
16 burden to prove that the punishment imposed upon the employee
17 is proportionate, reasonable, and just in the totality of the
18 circumstances. The bill prohibits a person from knowingly
19 withholding exculpatory evidence from an employee so charged.
20 The bill permits an attorney representing a party in such an
21 appeal to sign a subpoena. The bill authorizes the commission
22 to deliberate in closed session upon request of the employee.
23 The bill requires the commission to provide for the production
24 of evidence and exchange of exhibits in advance of trial.

25 If the city civil commission determines that the city proved
26 the employee committed the charge as specified, the bill
27 requires the commission to determine whether the disciplinary
28 action was unreasonable or unjust based upon the totality of
29 the circumstances based on factors including those specified
30 in the bill. The bill provides that the commission shall
31 only consider, order, or impose discipline upon the employee
32 for charges proven by the city. The bill provides that the
33 commission shall reverse the city's decision and dismiss a
34 charge with prejudice if the city fails to meet its burden
35 of proof as to any element of the charge. The bill provides

1 that the final decision of the commission shall be based upon
2 a majority vote of the commission, shall be made in writing,
3 and shall include findings of fact and conclusions relied upon,
4 and reasoning or rationale for the decision, separately stated.
5 The bill requires the commission to render and serve its final
6 decision upon the parties within 30 days of the close of the
7 record or trial unless the parties consent to a later date in
8 writing or on the record.

9 The bill provides procedures for counsel representing the
10 city in an appeal to a city civil services commission.

11 The bill strikes language providing that the scope of review
12 for an appeal of the decision of the city civil service to
13 district court shall be limited to de novo appellate review
14 without a trial or additional evidence. The bill instead
15 provides that the scope of review shall be a trial de novo.
16 The bill provides that in addition to any other remedies and
17 relief, upon application, the district court may award a
18 prevailing employee reasonable attorney fees, expert fees, and
19 costs and expenses.

20 The bill takes effect upon enactment.